

1 JENNIFER LEE TAYLOR (SBN 161368)
JTaylor@mofo.com

2 ROBIN L. BREWER (SBN 253686)
RBrewer@mofo.com

3 JOYCE LIOU (SBN 277720)
JLiou@mofo.com

4 MICHAEL J. GUO (SBN 284917)
MGuo@mofo.com

5 AMANDA D. PHILLIPS (SBN 305614)
APhillips@mofo.com

6 MORRISON & FOERSTER LLP
425 Market Street
7 San Francisco, California 94105-2482
Telephone: (415) 268-7000
8 Facsimile: (415) 268-7522

9 *Attorneys for Defendants*
UBIQUITI NETWORKS, INC. and
10 UBIQUITI NETWORKS INTERNATIONAL
LIMITED

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 SYNOPSYS, INC.,

15 Plaintiff,

16 v.

17 UBIQUITI NETWORKS, INC., UBIQUITI
18 NETWORKS INTERNATIONAL LIMITED,
CHING-HAN TSAI, and DOES 1-20,
19 inclusive,

20 Defendants.

21 UBIQUITI NETWORKS, INC. and UBIQUITI
22 NETWORKS INTERNATIONAL LIMITED,

23 Counterclaimants,

24 v.

25 SYNOPSYS, INC.,

26 Counterdefendant.

Case No. 5:17-cv-00561-WHO

**DECLARATION OF HARTLEY
NISENBAUM IN SUPPORT OF
DEFENDANTS UBIQUITI
NETWORKS, INC. AND
UBIQUITI NETWORKS
INTERNATIONAL LIMITED'S
OPPOSITION TO SYNOPSYS,
INC.'S MOTION FOR LEAVE TO
FILE THIRD AMENDED
COMPLAINT**

Date: June 6, 2018

Time: 2:00 p.m.

Place: Courtroom 2, 17th Floor

Judge: Honorable William H. Orrick

1 I, Hartley Nisenbaum, declare as follows:

2 1. I am employed by Ubiquiti Networks, Inc., (“Ubiquiti”) as Executive Vice
3 President of Legal Affairs. I submit this declaration in support of Defendants Ubiquiti Networks,
4 Inc. and Ubiquiti Networks International Limited’s (“UNIL”) Opposition to Synopsys, Inc.’s
5 Motion for Leave to File Third Amended Complaint. I have personal knowledge of the facts
6 contained in this declaration. If called as a witness, I could and would testify competently as
7 follows.

8 2. Ubiquiti and UNIL were sued by Plaintiff Synopsys, Inc. (“Synopsys”) on Friday,
9 February 3, 2017. The next business day, Monday, February 6, 2017, I sent out a litigation hold
10 on behalf of Ubiquiti and UNIL. The litigation hold recipients included Defendant Ching-Han
11 Tsai, Sheng-Feng Wang, Chi-Hsueh Huang, Hung-Lun Lian, Ya-Chau Yang, Yi-Te Lee, Chang-
12 Ching Yang, and Hua-Lin Hsu, among others. Subsequent to the distribution of the litigation
13 hold notice, Defendant Tsai was contacted and asked to make sure his team understood how
14 important a litigation hold notice is. Defendant Tsai confirmed that he stressed the importance of
15 the litigation hold to his team.

16 3. When I sent the litigation hold, I expected it would be observed by those receiving
17 it, and I had no reason to believe anyone would fail to comply with the litigation hold and destroy
18 evidence. To the contrary, I had every indication that they understood their obligation to retain
19 documents.

20 4. As part of discovery in the case, Defendant Tsai’s two computers and an external
21 drive were imaged in Fall 2017. During a forensic inspection of those devices in December 2017,
22 Ubiquiti discovered that Defendant Tsai had used a program called CCleaner to wipe portions of
23 the external drive, leaving only a single virtual machine.

24 5. In mid-January 2018, Ubiquiti discovered on one of Defendant Tsai’s computers
25 two personal Skype conversations that Defendant Tsai started in 2013 with computer engineers
26 that he recruited to work on the ASIC design project at UNIL. The Skype conversations
27 continued into 2014, well after those computer engineers started to work for UNIL. Among other
28 things, the Skype conversations contained references to wiping computers, erasing Skype

1 conversations, and using hacked software. True and correct copies of the Skype conversations
2 are attached as Exhibits 1 and 2.

3 6. After discovering the wiped drive and the Skype conversations, Ubiquiti realized
4 that Defendant Tsai had not been honest during its investigations in 2016 and 2017. Ubiquiti also
5 learned that Defendant Tsai had lied to Ubiquiti management regarding the use of Synopsys
6 software in Taiwan (including his own use of the software). Ubiquiti also realized that Defendant
7 Tsai had not complied with the company's express instructions in its litigation hold and likely had
8 instructed an unknown number of ASIC team members to destroy documents. Ubiquiti decided
9 that more had to be done to address the situation.

10 7. In early February 2018, Ubiquiti reminded the Taiwanese engineers of their duty
11 to preserve evidence and to comply with company policies against violating intellectual property
12 rights, and I circulated another copy of the litigation hold notice to the ASIC team members in
13 Taiwan. All of the Taiwanese team members also certified that they would abide by all company
14 policies going forward and they were told that they would be terminated if they violated any
15 company policy going forward.

16 8. Out of an abundance of caution, after Judge Beeler ordered forensic inspections of
17 computers of certain Taiwanese team members and after the parties subsequently stipulated to a
18 forensic inspection protocol, on February 26, 2018, Ubiquiti decided to image the devices in
19 Taiwan without providing any advance notice to any of the Taiwanese ASIC team members to
20 prevent any additional use of CCleaner or any similar "wiping" program by Defendant Tsai's
21 team members in Taiwan.

22 9. Ubiquiti contracted with Epiq Systems, Inc., a forensic vendor, who sent a forensic
23 specialist from Hong Kong to our Taipei office. Because he could not image all of the devices
24 simultaneously, the devices of the engineers most likely to have relevant information as
25 previously identified by Synopsys, including those of Ya-Chau Yang, were imaged the first day.
26 The remaining devices were imaged over the course of the week. The engineers were not
27 informed prior to Epiq's arrival in our office that their devices would be collected and imaged,
28

1 and they were not told the order in which devices would be collected and imaged during the
2 week.

3 10. Despite these efforts, Ubiquiti learned from reviewing Synopsys' motion for leave
4 to amend of Synopsys' allegations that materials were "suspiciously" deleted from certain UNIL
5 engineers' devices in February and March, including during the week that Epiq was in our Taipei
6 office collecting and imaging devices.

7 11. The day after Synopsys filed its motion, Ubiquiti suspended Defendant Ching-Han
8 Tsai, Chi-Hsueh Huang, Hung-Lun Lian, Ya-Chau Yang, Yi-Te Lee, Chang-Ching Yang, and
9 Hua-Lin Hsu, all of whom are implicated by Synopsys' allegations of spoliation, pending a
10 determination of whether the allegations in the proposed Third Amended Complaint are true.
11 That same day, Ubiquiti also asked Epiq to investigate Synopsys' spoliation allegations in the
12 proposed amended complaint. As soon as Epiq's investigation is completed, Ubiquiti will
13 determine the appropriate course of action with respect to the suspended employees, which likely
14 will be termination if Synopsys' allegations about them are substantiated.

15 12. To make sure it understands the full scope of the ASIC team's conduct, Ubiquiti
16 also engaged the leading forensic firm, Stroz Friedberg, to conduct an independent forensic
17 investigation of the devices of all ASIC team members, as well as the servers and storage array
18 located in Taiwan. This investigation may lead to additional disciplinary action against the
19 suspended ASIC team members.

20 I declare under penalty of perjury of the laws of the United States that the foregoing is true
21 and correct.

22 Executed this 16th day of May, 2018, in New York, New York.

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24
25
26 By: /s/ Hartley Nisenbaum
HARTLEY NISENBAUM